

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NOTICE OF REMOVAL

Dearborn National Life Insurance Company (“Dearborn National” or “Defendant”) respectfully removes this action to the United States District Court for the Southern District of Texas, Houston Division, subject to the Motion to Transfer Venue it filed in the 189th Judicial District Court of Harris County, Texas.

INTRODUCTION

1. Plaintiff has filed an Original Petition against Dearborn National in the District Court of Harris County, Texas, 189th Judicial District, Cause No. 2015-03451. Dearborn National first became aware of this action when it received a copy of the Petition and a citation on December 16, 2015. Pursuant to 28 U.S.C. § 1446(a), Dearborn National has attached copies of all process, pleadings, or orders served on it or by it as the Appendix to this Notice of Removal.¹

¹ The Harris County District Court dismissed the case for want of prosecution on November 12, 2015, before the citation was issued. *See Appendix at Exhibit 5.* However, Plaintiff's counsel has indicated he intends to seek reinstatement of the case. Accordingly, out of an abundance of caution, Dearborn National answered the case in Harris County District Court, and files this Notice of Removal.

2. Dearborn National files this removal notice within the 30-day period required in 28 U.S.C § 1446(b).

GROUND FOR REMOVAL

3. This case is removable under 28 U.S.C. § 1441 based on federal diversity jurisdiction existing under 28 U.S.C. § 1332, for the following reasons:

a. Plaintiff is and was at the time of the filing of the Plaintiff's Original Petition ("Petition"), an individual citizen of Texas. *See Petition at ¶ 2 (Appendix, Ex. 3).* Dearborn National is currently, and was at the time of the filing of the Petition, a corporation incorporated in Illinois, with its principal place of business in Illinois currently and at the time of the filing of Petition. *See Petition at ¶ 3; Exhibit 1.*

b. Plaintiff filed the instant case in the District Court of Harris County, Texas. Plaintiff alleges claims for breach of contract (Petition at ¶¶ 7-8), and breach of an alleged duty of good faith and fair dealing (Petition at ¶ 10). He seeks actual damages, exemplary damages and attorney's fees (Petition at ¶¶ 10-11). It is therefore apparent from an analysis of Plaintiff's allegations that the amount in controversy in this action exceeds the jurisdictional sum of \$75,000.00. *See St. Paul Reinsurance Co, Ltd. v. Greenberg*, 134 F.3d 1250, 1255 (5th Cir. 1998); *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

c. Complete diversity of citizenship between Plaintiff and Dearborn National exists currently, and existed at the time that Plaintiff filed his Petition; Dearborn National is not a citizen of Texas and was not at the time that Plaintiff's Petition was filed; and the amount in controversy exceeds \$75,000. This case, therefore, is removable based on diversity jurisdiction.

4. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place where the removed action has been pending. *See* 28 U.S.C. § 124(b)(2).

5. Pursuant to 28 U.S.C. § 1446(d), Dearborn National will promptly provide written notice of this removal to the District Court for Harris County, Texas.

Respectfully submitted,

By: /s/ Andrew F. MacRae

ANDREW F. MACRAE

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ATTORNEYS FOR DEFENDANT
DEARBORN NATIONAL LIFE
INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal has been filed through the CM/ECF system on this 14th day of January, 2016. A copy of this Notice of Removal has also been forwarded via e-mail, to the following counsel of record:

William C. Herren
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billh@herrenlaw.com

/s/ Andrew F. MacRae

ANDREW F. MACRAE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DECLARATION OF ANDREW F. MacRAE

STATE OF TEXAS

COUNTY OF TRAVIS

1. My name is Andrew F. MacRae. I am over the age of eighteen (18) years and fully competent in all respects to make this Declaration. I have personal knowledge of the facts stated herein and they are true and correct.

2. I am counsel of record for Dearborn National Life Insurance Company (“Dearborn National”), formerly known as Fort Dearborn Life Insurance Company (“Fort Dearborn”). I serve as Dearborn National’s registered agent for service of process in Texas, and did so for Fort Dearborn as well. Dearborn National is an Illinois corporation (as was Fort Dearborn), and has been since before this suit was filed. Dearborn National’s principal place of business is in Illinois (as was Fort Dearborn’s), and has been since before this suit was filed.

3. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 14, 2016.

/s/ Andrew F. MacRae

Andrew F. MacRae

EXHIBIT 1